

All previous versions of IFB and Amendments for Sale GSA-R-1543 are hereby void. (IFB Revised 9-19-06)

On-Line Auction



Albuquerque Federal Building 517 Gold Ave. SW Albuquerque, New Mexico

Sale No. GSA-R-1543

Auction Begins: September 8, 2006

U.S. General Services Administration
Real Property Disposal Division
819 Taylor Street, Room 8A10
Fort Worth, Texas 76102-6103
(817) 978-2331
<http://propertydisposal.gsa.gov/property/>



Important Notice

- Bidders should read all pages and all sections of the Invitation for Bids (IFB) before making a bid.
- GSA is not responsible for the accuracy of any IFB that was not obtained directly from the United States Government.
- Bids for Real Property Purchase will be received continuously until sold at the GSA Real Property Disposal Division office in Fort Worth, Texas.
- Bid checks will be deposited upon receipt, with a refund of the amount to the unsuccessful bidders upon award.
- Bids must be made on the bid forms contained in this Invitation for Bids.
- All bids must include a bid deposit as described in the Instructions to Bidders.
- Credit card deposits must include the "Deposit by Credit Card" form included in this IFB.
- The following information must appear in the lower left hand corner of the bid envelope.

SALE #	GSA-R-1543
SALE DATE	On-Line Auction
SALE OFFICE	7PR

See the property on the Internet at: <http://propertydisposal.gsa.gov>

SALE OF GOVERNMENT REAL PROPERTY

SALE NO. GSA-R-1543

INVITATION FOR BIDS

**Albuquerque Federal Building
517 Gold Ave. SW
Albuquerque, NM 87102**

Bids for the purchase of the Government owned property described in the Schedule portion of this Invitation for Bids will be received continuously by the General Services Administration for Sale Number GSA-R-1543, at the General Services Administration Real Property Disposal Division Room 8A10 of the Fritz G. Lanham Federal Building located at 819 Taylor Street, Fort Worth, Texas 76102-6103. As used therein "Government" shall mean the United States of America, acting by and through the Administrator of General Services.

BID REGISTRATION SHOULD BE SUBMITTED TO:

**GENERAL SERVICES ADMINISTRATION
REAL PROPERTY DISPOSAL DIVISION – 7PR
819 TAYLOR STREET, ROOM 8A10
FORT WORTH, TEXAS 76102-6103**

The property can be viewed and inspected on Open House dates printed in this IFB or as announced on GSA's web site at **www.propertydisposal.gsa.gov**. For information or to make an appointment call **Sharon Jennings** at **817-978-4242** or write to Real Property Disposal Division, (7PR), General Services Administration (GSA), 819 Taylor Street, Fort Worth, TX 76102.

E-Mail Address is sharon.jennings@gsa.gov

This Invitation for Bids is issued subject to, and bids submitted pursuant to this Invitation for Bids must be in compliance with and subject to, the provisions of this Invitation for Bids, including the Schedule portion thereon, and (1) the Instructions to Bidders; (2) the General Terms of Sale; (3) the Special Terms of Sale, Invitation No. GSA-R-1543; and (4) the provisions of Bid Form and Acceptance, all of which are attached to this Invitation for Bids and by this reference made a part thereof.

Location and Description:

Albuquerque Federal Building
517 Gold Ave. SW
Albuquerque, NM 87102

The property consists of a 0.978 acre parcel of land improved with an eight-story office building plus basement, that was constructed in 1958. The building is of concrete frame construction and contains 273,027 gross square feet. The top two floors are structurally unsafe to occupy and three additional floors do not meet local code. The building's power plant serves three additional Federally owned buildings in the area. A requirement of the sale is a signed lease to the United States of America and Utility Usage Terms both of which are made a part of this Invitation for Bids.

Inspection:

Property may be inspected by appointment only. For an appointment call Mr. Waldo Griego, GSA, Senior Property Manager, at telephone 505-248-7321.

SCHEDULE

1. Location: The property is located at 517 Gold Avenue in downtown Albuquerque, Bernalillo County, New Mexico.

2. The Offering:

Legal Description:

Lots Numbered Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Three (23), and Twenty-Four (24) of Block Numbered Nineteen (19) of the New Mexico Town Company's Addition to the City of Albuquerque, New Mexico, known as the original townsite, as the same are shown and designated on the map of said townsite, filed in the office of the Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico, on December 29, 1882.

3. This sale is made on the basis that the following described rights, titles and interests shall be reserved unto the United States of America and its assigns from and out of the hereinabove described property and the final instrument of conveyance shall contain the following terms and provisions of reservation:

SAVE AND EXCEPT and there is hereby reserved unto the UNITED STATES OF AMERICA, and its assigns, all rights and interests which have been previously reserved to the UNITED STATES OF AMERICA in the Patent(s) which cover(s) the Property.

SAVE AND EXCEPT and there is hereby reserved unto the UNITED STATES OF AMERICA, and its assigns, all rights and interests which have been previously reserved to the UNITED STATES OF AMERICA under the terms and conditions of U.S. Government Lease For Real Property No. GS-07B-16182.

4. This sale is made and the conveyance of the hereinabove described property shall be made subject to the following outstanding interests and exceptions which shall be set forth in the final instrument of conveyance in the following manner:

This deed and conveyance is expressly made subject to the following matters to the extent and only to the extent the same are valid and subsisting and affect the Property:

a. All existing permits, servitudes, easements and rights-of-way for public streets, roads and highways, public utilities, electric power lines, electric transmission facilities, railroads, pipelines, ditches, conduits and canals on, over and across said land, whether or not of record.

b. All existing interest(s) reserved to or outstanding in third parties in and to water rights, ditch and reservoir rights, as well as oil, gas, and/or minerals, whether or not of record.

- c. All other existing interests reserved by any grantor(s) in chain of title unto said grantor(s), their respective successors and assigns, which affect any portion of the Property interest(s) hereinabove described, whether or not of record.
- d. Any survey discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements which may affect the subject Property.
- e. Existing ordinances or resolutions, special purpose district rules and regulations, including soil conservation district rules and regulations and water conservancy district rules and regulations, filed of public record and affecting all or any portion of the subject Property.
- f. Terms, agreements, provisions, conditions and obligations as contained in U.S. Government Lease for Real Property No. GS-07B-16182.
- g. Transcript of Judgment in favor of Edmund J. Lang, P.A., which was filed on May 28, 1998, in Book 9810, Page 3690, Office of the County Clerk, Bernalillo County, New Mexico.

5. This sale is expressly made subject to the following environmental notices, exceptions, restrictions and covenants affecting the Property to the extent and only to the extent the same are valid and affect the Property:

CERCLA Notices, Covenants and Reservations

Grantee **covenants** for itself, assigns and every successor in interest to the property herein described or any part thereof that it shall abide by each of the following covenants, each of which will be covenants running with the land. In addition, the United States of America shall be deemed a beneficiary of each of the following covenants without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have a right to enforce each of the following covenants in any court of competent jurisdiction; provided, however, the United States shall have no affirmative duty to any successor in title to this conveyance to enforce any of the following covenants herein agreed:

a. **CERCLA Notice** - Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice that the following hazardous substances have been released or disposed of or stored for one year or more on the Property:

(1) Sand in the bullet trap of the basement firing range contains a Lead Toxicity Characteristic Leaching Process (TCLP) index of 1400 milligrams per liter.

b. **CERCLA Covenant** - Grantor hereby covenants and warrants that all remedial action necessary to protect human health and the environment has been taken before the date of delivery of this Quitclaim Deed. Grantor warrants that it shall take any additional response action found to be necessary after the date of this Quitclaim Deed

regarding hazardous substances located on the Property on or prior to the date of this conveyance.

(1) This covenant shall not apply:

(a) in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; OR

(b) to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

(i) results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; OR

(ii) causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance; OR

(iii) in the case of a hazardous substance(s) previously unknown by Grantor and Grantee as of the date of this conveyance but which is hereafter discovered by Grantee, its successor(s) or assign(s), or any party in possession and where after such discovery, Grantee, its successor(s) or assign(s), or any party in possession thereafter causes or exacerbates a release or threatened release of such hazardous substance(s).

(2) In the event Grantee, its successor(s) or assign(s), seeks to have Grantor conduct any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide Grantor at least 45 days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that:

(a) the associated contamination existed prior to the date of this conveyance; and

(b) the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.

c. **Access.** Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response

action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

d. Non-Disturbance Clause. Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property, or part thereof, not to disrupt and/or prevent the United States of America, its officers, employees, agents, contractors and subcontractors, and any other authorized party or entity from conducting any required Response, including, but not limited to any necessary investigation, survey, treatment, remedy, oversight activity, construction, upgrading, operating, maintaining and monitoring of any groundwater treatment facilities or groundwater monitoring network on the Property.

6. This sale is made and the conveyance of the hereinabove described property shall be made under and in consideration of the following covenants which will be set forth in the final instrument of conveyance in the following manner:

a. Grantee has inspected the hereinabove described and conveyed property and has satisfied him/her/itself that the property is free of any hazardous substance(s) or petroleum products or their derivatives, and Grantee, his heirs, and assigns, will indemnify, protect, defend, save and hold harmless Grantor, and Grantor's employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, causes of action, damages, losses, cost and expenses (including without limitation, costs associated with any investigation, monitoring, sampling, testing or removal of hazardous substance(s), attorneys' fees and expenses and court costs) in any way relating to, connected with, and/or arising out of the discovery of any hazardous substance(s) or petroleum product(s) or their derivatives which may have contaminated the hereinabove and conveyed property after the date of this Deed.

b. Grantee covenants for itself, its successors and assigns and every successor in interest to the property herein described of any part thereof, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the FAA in accordance with Title 14, Code of Federal Regulations, Part 66, entitled, "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

**c. Notice of Lead-base Paint For Non-Residential Real Property
Constructed Prior to 1978**

Every acquirer of any interest in real property on which a building was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to converting the property to a residential dwelling.

d. Notice of the Presence of Asbestos— Warning!

(1) The Purchaser is warned that the property offered for sale contains asbestos containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(2) Bidders are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid. More particularly, bidders are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(3) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after its opening or tender.

(4) The description of the property set forth in the Invitation for Bids and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct,

but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(5) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(6) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

e. Pesticides Disclosure:

The Grantee is notified that the Property may contain the presence of pesticides that have been applied in the management of the property. The United States knows of no use of any registered pesticide in a manner inconsistent with its labeling, and believes that all applications were made in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA – 7 U.S.C. Sec. 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. Furthermore, that in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA – 42 U.S.C. Sec. 9601, et seq.), the use of such substances is not a “release” (as defined in CERCLA, 42 U.S.C. Sec. 9601 (22)), but instead the use of a consumer product in consumer use (42 U.S.C. Sec. 9601(9)), and the application of a pesticide product registered under FIFRA for which recovery for response costs is not allowed (42 U.S.C. Sec. 9607(i)).

7. MISCELLANEOUS COVENANTS

a. Except as otherwise provided by 42 U.S.C. 9620(h)(3), **Grantee** covenants for itself, and its heirs or assigns, and every successor in interest in the Property, to abide by each of the agreements and covenants, specified herein, which are covenants running with the land. In addition, **Grantor** and its assigns shall be deemed beneficiaries of each of the specified agreements and covenants without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have a right to enforce each of the agreements and covenants in any court of competent jurisdiction. Notwithstanding the foregoing, **Grantor** and its assigns shall have no affirmative duty to any successor in title to this conveyance to enforce any of the agreements and covenants provided herein.

b. General Agreement:

The Property is conveyed “**as is**” and “**where is**” without any representation or warranty on the part of Grantor to make any alterations, repairs or additions. Grantee, for itself and its successors and assigns, further acknowledges that Grantor has made no representations or warranty concerning the condition and state of repair of the Property nor has Grantor made any other agreement or promise to alter, improve, adapt or repair the Property not otherwise contained herein.

SPECIAL TERMS OF SALE

1. Government Lease & Lease Option:

The Government currently has a need to provide utility services to other properties for a period of up to 5 years from the date of conveyance. The Property will be leased from the successful Bidder for 5 years with a right of termination in whole or in part anytime after the 3rd year by giving 60 days written notice under the terms and conditions of Lease GS-07B-16182 contained in this Invitation for Bids. This lease may be renewed, at the option of the Government, for successive one (1) year terms at the annual rental specified in Lease GS-07B-16182.

a. Bidder must completely fill in GSA Standard Form 2, “U.S. Government Lease for Real Property”; initial each page of GSA Form 5NM0035, GSA Form 3517B, “General Clauses” as requested; fill in all blanks and initial each page of GSA Form 3518, “Representations and Certifications” as requested. All of the above are included in this Invitation for Bids, and by this reference made a part hereof.

(1) Bidders debarred from entering into Federal contracts or are otherwise prohibited from participating in lease arrangements with the Government will be considered non-responsive and their bid rejected under the General Terms of Sale herein.

(2) Award of lease will be made only after receipt of full purchase price from the awarded Offeror. Notification of award of sale and award of lease will be made under separate cover and both awards are dependent upon the other.

b. Method of Payment - Bid Deposit:

Paragraph 12 of Instructions to Bidders, requires a bid deposit to accompany each bid. The amount of such bid deposit must be at least **\$1,000**. Such bid deposit must be in the form of a cashier’s check payable to the order of General Services Administration or by credit card. Credit card deposits must be made on the Bid Deposit by Credit Card form provided in this IFB.

c. Method of Payment – Balance of Purchase Price:

The balance of the purchase price shall be payable in full within 30 days of acceptance or at time of closing. Wire transfer of funds shall effect payment of the balance of the purchase price. Such wire transfer shall be initiated by the bidder by having its bank transmit the required monies by transmitting a funds transfer message to the United States Treasury. The format and procedure for transmitting the required wire transfer message to the United States Treasury

will be provided to the purchaser upon acceptance by the Government of such bid.

d. Method of Award.

Successful High Bidder(s) will be notified by letter that award has been made on the item(s) bid.

GENERAL TERMS OF SALE

(GOVERNMENT REAL AND RELATED PERSONAL PROPERTY)

1. TERM - "INVITATION FOR BIDS."

The term "Invitation for Bids" as used herein refers to the foregoing Invitation for Bids, and its Schedule; the Instructions to Bidders; the General Terms of Sale set forth herein; and the provisions of the Special Terms of Sale, Bid Form, and Acceptance all as may be modified and supplemented by any addenda that may be issued prior to the time fixed in the Invitation for Bids for the opening of bids or conducting of an auction.

2. DESCRIPTIONS IN INVITATION FOR BIDS.

The descriptions of the property set forth in the Invitation for Bids and any other information provided therein with respect to said property are based on information available to the GSA sales office and are believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other federal agency, shall not constitute ground or reason for nonperformance of the contract of sale, or claim by purchaser for allowance, refund, or deduction from the purchase price.

3. INSPECTION.

Bidders are invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. The failure of any bidder to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after the bid opening or auction.

4. CONDITION OF PROPERTY.

The property is offered for sale and will be sold "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered after the bid opening or conclusion of an auction.

5. ZONING.

Verification of the present zoning and determination of permitted uses thereunder, along with compliance of the property for present or proposed future use, shall be the responsibility of the bidder and the Government makes no representation in regard thereto. The Government does not guarantee that any zoning information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the zoning information shall not be cause for adjustment or rescission of any contract resulting from this Invitation for Bids or Sales Agreement.

6. CONTINUING OFFERS.

Each bid received shall be deemed to be a continuing offer after the date of bid opening or auction for 90 calendar days, unless the bid is accepted or rejected by the Government before the expiration of

the 90 calendar days. If the Government desires to accept any bid after the expiration of the 90 calendar days, the consent of the bidder shall be obtained prior to such expiration.

7. POSSESSION.

- a. The successful bidder agrees to assume possession of the property within 15 calendar days of a written request given by the Government after acceptance of his/her bid. Should the successful bidder fail to take actual possession within such period, bidder shall, nonetheless be charged with constructive possession commencing at 12:01 a.m., local time at the location of the property, on the 16th calendar day after such request by the Government. The word "possession" shall mean either actual physical possession or constructive possession.
- b. Although by assuming possession under (a), above, the bidder incurs certain responsibilities and obligations under other conditions of this contract, such possession does not confer any right in the bidder either to make any alterations or improvements in or to the property or to use it for any purpose of his own without first obtaining the written approval of the Contracting Officer. Any such approval will be conditioned on the bidder paying to the Government for the privileges granted, for the period from the date of the approval to the date of conveyance, an amount equal to the interest for such interval of time on the unpaid balance of the purchase price. The interest rate shall be computed based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-½% rounded to the nearest one-eighth percent (⅛%) as of the date of bid acceptance.

8. TAXES.

As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the successful bidder shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the property and to prorate sums paid, or due to be paid, by the Government in lieu of taxes.

9. RISK OF LOSS.

As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the successful bidder shall assume responsibility for care and handling and all risks of loss or damage to the property and have all obligations and liabilities of ownership.

10. INSURANCE.

- a. In the event a bid to purchase on credit terms is accepted, the successful bidder shall procure and maintain insurance at bidder's expense during the term credit is extended effective as of the date of assumption of possession of the property or the date of conveyance, whichever occurs first, for the benefit of the Government in such kinds and amounts as may be required by the Government.
- b. In the event a bid to purchase for cash is accepted and possession of the property is assumed by the successful bidder prior to the date of conveyance, the successful bidder shall procure and maintain insurance at bidder's expense, effective for the period from the date of assumption of possession to date of conveyance, for the benefit of the Government in such kinds and amounts as may be required by the Government.
- c. Fire, extended coverage, and vandalism and malicious mischief insurance shall be maintained on the real and personal property covered by the bid, and such other property insurance as required to protect the Government's interest, and shall be in such amounts which, after taking into account the coinsurance provision, if any, of the insurance policies, will protect the unpaid indebtedness. All property insurance policies furnished in connection with credit sales shall be written in the name of the bidder, but shall name General Services Administration, as loss payee under a Standard Mortgage Clause (non-contributing) for real property and as a loss payee for personal property.

- d. Insurance required by the Government shall be in companies acceptable to the Government and shall include such terms and provisions as may be required to provide coverage satisfactory to the Government. The original insurance policies or binders of insurance for the required insurance shall be provided as of the date of closing of the sale and all insurance policies or binders shall include a thirty (30) calendar day notice of cancellation to GSA.
- e. Information concerning insurance requirements will be furnished by the Real Property Disposal Division.

11. ANTITRUST LAWS.

The contract made by acceptance of a bid by the Government may be transmitted to the Attorney General of the United States for his advice as to whether the sale would tend to create or maintain a situation inconsistent with the antitrust laws. The acceptance of any bid by the Government may be rescinded by the Government, in case unfavorable advice is received from the Attorney General, without liability on the part of the Government other than to return the earnest money deposit without interest.

12. REVOCATION OF BID AND DEFAULT.

In the event of revocation of a bid after the opening of bids or conducting of an auction but prior to acceptance, or in the event of revocation of a bid after notice of acceptance, or in the event of any default by the successful bidder in the performance of the contract of sale created by such acceptance, or in the event of failure by the successful bidder to consummate the transaction, the deposit, together with any payments subsequently made on account, **may be forfeited** at the option of the Government, in which event the bidder shall be relieved from further liability, or without forfeiting the said deposit and payments, the Government may avail itself of any legal or equitable rights which it may have under the bid or contract of sale.

13. GOVERNMENT LIABILITY.

If this Invitation for Bids is accepted by the Seller and: (1) Seller fails for any reason to perform its obligations as set forth herein; or (2) Title does not transfer or vest in the Purchaser for any reason although Purchaser is ready, willing, and able to close, Seller shall promptly refund to Purchaser all amounts of money Purchaser has paid without interest whereupon Seller shall have no further liability to Purchaser.

14. TITLE EVIDENCE.

Any title evidence which may be desired by the successful bidder will be procured by him at his sole cost and expense. The Government will, however, cooperate with the successful bidder or his authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and property involved, as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters or survey of the property.

15. TITLE

If a bid for the purchase of the property is accepted, the Government's interest will be conveyed by a quitclaim deed or deed without warranty and/or, where appropriate, a bill of sale in conformity with local law and practice.

16. TENDER OF PAYMENT AND DELIVERY OF INSTRUMENT OF CONVEYANCE.

The Government shall set a sale closing date, said date to be not later than 30 calendar days after acceptance of the bid. On the closing date, the successful bidder shall tender to the Government, by wire transfer, the balance of the purchase price. Upon such tender being made by the successful

bidder, the Government shall deliver to the successful bidder the instrument, or instruments, of conveyance. The Government reserves the right to extend the closing date for a reasonable amount of time for purposes of preparing necessary conveyance documents. In any event, if possession was assumed by the successful bidder prior to the date of conveyance, the successful bidder shall pay, in addition to the purchase money due, an amount determined in accordance with 7, above.

17. DELAYED CLOSING.

The successful bidder shall pay interest on the outstanding balance of the purchase price if the closing of the sale is delayed, and the delay is caused, directly or indirectly, by the successful bidder's action and not by any action on the part of the Government. The interest rate shall be computed based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2% rounded to the nearest one-eighth percent (1/8%) as of the date of bid acceptance. The Government reserves the right to refuse a request for extension of closing.

18. DOCUMENTARY STAMPS AND COST OF RECORDING.

The successful bidder shall pay all taxes and fees imposed on this transaction and shall obtain at bidder's own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the successful bidder's expense.

19. CONTRACT.

The Invitation for Bids, and the bid when accepted by the Government, shall constitute an agreement for sale between the successful bidder and the Government. Such agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract. Nor shall the contract, or any interest therein, be transferred or assigned by the successful bidder without consent of the Government, and any assignment transaction without such consent shall be void.

20. OFFICIALS NOT TO BENEFIT.

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of the contract of sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.

INSTRUCTIONS TO BIDDERS – Online Auction

(Government Real and Related Personal Property)

1. TYPE OF SALE.

The method of sale used here is an On-line Auction, which can also be described as a written auction. It is much like an oral auction except that instead of voice bids, electronic or written bids are submitted; and, instead of having to travel to attend the bidding, you can submit your bid by computer, fax or mail and increase your bid by either mail, fax or from your computer on the Internet from your home or office. Bidding will take place over a couple of weeks or until the property is sold. You can find out when new bids come in and what the high bids are by viewing our web page at www.auctionrp.com/auctions2.

2. BIDDING IN GENERAL.

Bids will be received until a high bid is awarded. All bids are irrevocable for 90 days from the date of receipt by the Government. The bid that represents the best value to the Government will be

considered for acceptance. THE GOVERNMENT RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS AT ANY TIME FOR ANY REASON.

3. REGISTERING BIDDERS, USER ID & PASSWORD.

a. Registration is a 3-step process.

- (1) Online registration on our Internet sale site www.auctionrp.com.
- (2) Bid Form in this Invitation for Bids (IFB) must be filled out, signed and dated and delivered to the sales office identified in the IFB. Faxed Bid Forms are acceptable.
- (3) Bid Deposit - The authorized Bid Deposit payment methods are by Cashier's Check or by Credit Card using the Bid Deposit by Credit Card Form in this IFB. Personal or business checks are NOT acceptable. Cash is not recommended.

b. Once the Bid Form, on-line registration, and bid deposit are received by the sales office, the bidder's User ID and Password from the online registration will be activated and electronic bids may be made. The bidder's User ID will be used to identify the bidders on the auction web page. Bidders assign their own User ID (limited to eight (8) characters) and Password. However, as this is a public forum, privacy of bidder names and addresses is not implied and may be released to third parties. If you do not register online, a User ID and Password will be assigned to you. The User ID must be on the bid form when submitting bid increases, by mail or fax. The User ID number will be used to identify the bidders on our auction web page, www.auctionrp.com/auctions2.

4. CONTINUOUS BIDDING RESULTS.

The current high bid is available any time (24 hours a day) by viewing the auction at www.auctionrp.com/auctions2.

5. BID FORM.

- a. Bids must be submitted on the Bid Form accompanying this Invitation for Bids, and all information and certifications called for thereon must be furnished. Bids submitted in any other manner or which fail to furnish all information or certifications required may be summarily rejected. Faxed bids are acceptable and may be modified or withdrawn by confirmed request prior to the time of award. The High Bidder identified at the end of the sale shall provide an original, signed and dated Bid Form to the GSA sale office prior to closing.
- b. Bid Forms shall be filled out legibly with all erasures, strikeouts, and corrections initialed by the person signing the bid and the bid must be manually signed.
 - (1) Check appropriate box for Initial or Increased Bid.
 - (2) Fill in Date of Bid line.
 - (3) Fill in Bid Amount in the space indicated.
 - (4) Check the appropriate Bidder circle whether bidding as an individual, trustee, partnership or corporation.
 - (5) Fill in the Name, Address, and Phone Number section of the Bid Form.
 - (6) Sign and Date the Bid Form.
- c. Bids must be submitted without contingencies.

- d. Bids that are not submitted on GSA forms will be rejected.
- e. Negligence on the part of the bidder in preparing and submitting the bid confers no right for withdrawal or modification of the bid after it has been received.
- f. In submitting an initial bid, return the Bid Form (in duplicate) and bid deposit. Retain all other documents, including one copy of the Bid Form, for your record.

6. BID ENVELOPES.

Envelopes containing bids must be sealed and addressed to the bid receiving office stated in this Invitation for Bids. The name and address of the bidder must be shown in the upper left corner of the bid envelope, and the invitation number and the phrase "Bid for Real Property" must be shown in the lower left corner of the envelope. No responsibility will attach to any officer of the Government for the failure to open a bid not properly addressed and identified.

7. INCREASING A BID ONLINE.

If you learn from the web page that your bid is not the high bid, you can submit a higher bid until such time as bidding is closed. Increases in previously submitted bids are welcome and the bid deposit from your first bid will apply to subsequent increased bids. If your bid is not accurately shown on the web page, then you must call us at 817-978-2331. By submitting your bid through our web page, you are agreeing that your Internet bid is a binding offer subject to all the terms of this IFB.

8. INCREASING A BID BY FAX.

- a. Bids by fax may be made by using the bid deposit form in the bid package. By faxing your bid, you are agreeing that your faxed bid is a binding offer. Faxed bids must be completely filled out and signed. The fax number for increased bids or initial bids is (817) 978-0212.
- b. A bid submitted by fax will only be accepted during business hours and must arrive at the place and by the date and time that the Government has specified as the deadline for receipt of bids. If a bidder chooses to transmit a bid by fax, the Government will not be responsible for any failure attributable to the transmission or receipt of the faxed bid, including, but not limited to, the following:
 - (1) Receipt of a garbled or incomplete bid
 - (2) Availability or condition of the receiving facsimile equipment
 - (3) Incompatibility between the sending and receiving equipment
 - (4) Delay in transmission or receipt of bid
 - (5) Failure of the bidder to properly identify the bid
 - (6) Illegibility of bid
 - (7) Security of bid data

If your fax bid is not reflected on the web page and your bid is higher than the announced bid, you must call the Sales Office at (817) 978-2331 for verification that your bid was received.

9. 24-HOUR "SOFT CLOSE" BID SURVIVAL ROUTINE.

The Government will announce a date for the receipt of final bids on the sale web page. On that date at 2:00 p.m. Central, a 24-hour clock starts for the High Bid. If the high bid on the announced date at 2:00 p.m. survives 24-hours without challenge, then bidding will close at the stated time and

consideration for award will be given to the High Bidder. If an increased bid is received within 24-hours, then bidding will be held over an additional 24-hours, excluding weekends and Federal holidays, on the same terms. This process will continue until a bid remains unchallenged. Bid survival time increments may be changed from 24 hours (reduced or increased) as determined by the Government. Bidder agrees that notices of changes to the sale are satisfactory when made available on the sale web page at <http://auctionrp.com/auctions2>.

10. FINAL BIDS AND ENDING OR SUSPENDING THE SALE.

Once bidding stops and a high bid has been determined, the high bidder will be considered for award of sale and the sale will be ended. There is no guarantee that the Government will accept the high bid. The Government reserves the right to stop the sale for any reason without award and start a new sale at any time. The Government may resolve bidding conflicts by determining who is the high bidder and high bid and re-open bidding until bidding stops as described above. The Government may temporarily suspend a sale to resolve sale controversies and resume a sale at any time.

11. BID EXECUTED ON BEHALF OF BIDDER.

A bid executed by an attorney or agent on behalf of the bidder shall be accompanied by an authenticated copy of his Power of Attorney or other evidence of his authority to act on behalf of the bidder.

a. Corporation. If the bidder is a corporation, the Certificate of Corporate Bidder must be executed.

(1) The certificate must be executed under the corporate seal by some duly authorized officer of the corporation other than the officer signing the bid. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

b. Partnership. If the bidder is a partnership, and all partners sign the bid, with a notation that they are all the partners, the Government will not ordinarily require any further proof of the existence of the partnership. If all the partners do not sign the bid, then the names of all those except limited partners must be furnished on the bid and the Government, in its discretion, may require evidence of the authority of the signer(s) to execute the bid on behalf of the partnership.

12. BID DEPOSIT TERMS - REGISTRATION.

A bid deposit not less than the amount required by this Invitation for Bids must accompany each bid, as follows:

a. In the form of a cashier's check payable to the order of: "General Services Administration or (Name of Bidder)". This will enable bidders whose bids are rejected to negotiate the instrument once it is returned. Failure to so provide such bid deposit shall require rejection of the bid. Upon acceptance of a bid, the appropriate bid deposit of the successful bidder shall be applied toward payment of the successful bidder's obligation to the Government. Appropriate bid deposits accompanying bids that are rejected will be returned to bidders, without interest, within 5 business days after rejection of the bids, or

b. Credit cards (Visa, MasterCard, American Express, Discover) may be used for Bid Deposits and will be accepted only with the Bid Deposit by Credit Card form provided in the Invitation for Bids. **CREDIT CARD DEPOSITS SUBMITTED WITHOUT THE "BID DEPOSIT BY CREDIT CARD" FORM WILL NOT BE REGISTERED UNTIL THE SALE OFFICE RECEIVES THE FORM.** Credit card deposits on rejected bids will be credited within 5 business days after rejection of the bid. Faxes of all required forms are acceptable.

13. BID DEPOSIT TERMS – HIGH BIDDER 10% BID DEPOSIT.

- a. Within five (5) business days of acceptance of an offer by the Government, the successful bidder agrees to deposit an additional amount, if any, which when added to the registration deposit, will equal at least ten percent (10%) of the final amount bid. Failure to so provide such bid deposit within five (5) business days of the Government's acceptance of an offer shall require rejection of the bid as a default under the terms of Paragraph 12 of the General Terms of Sale herein.
- b. Upon acceptance of a bid, the appropriate bid deposit of the successful bidder shall be applied towards payment of the successful bidder's obligation to the Government. The full balance of the purchase price is payable within thirty (30) calendar days after award. At the time of closing, all cash money paid by the Purchaser will be credited, without interest, toward the total purchase price.
- c. Bid deposits received from the two highest bidders will be held as stipulated in Paragraph 14, Backup Bidder. All other registration deposits will be returned.

14. BACKUP BIDDER

The second-highest bidder will be the Backup Bidder. The Backup Bidder may be considered for award: 1) If the first High Bidder is unable to consummate the transaction; 2) if the first High Bidder fails to increase their initial bid deposit to the required 10% of the purchase price. The Backup Bidder's deposit will be retained, without interest, until the first High Bidder meets both of the above requirements. Subsequently the bid deposit of the second-high bidder will be returned by mail immediately thereafter. In the event that the Government is unable to make an award to the highest or second-highest bidder, the Government reserves the right to negotiate with the remaining bidders and make an award that is in the best interest of the Government.

15. ACCEPTABLE BID.

A bid received from a responsive bidder whose bid, conforming to this Invitation for Bids, will be most advantageous to the Government, price and other factors considered, is an acceptable bid. In the event two or more acceptable bids are received that are equal in all respects, the selection will be made by a drawing by lot limited to such equal bids.

16. NOTICE OF ACCEPTANCE OR REJECTION.

Notice by the Government of acceptance or rejection of a bid shall be deemed to have been sufficiently given when announced on the Sales Office's web site, faxed, e-mailed, or regularly mailed to the bidder or his duly authorized representative at the address indicated in the Bid Form. The Government's processing of a bid deposit shall not, in itself, constitute acceptance of the bidder's offer. The Government reserves the right to reject any or all bids or portions thereof for any reason.

17. ADDITIONAL INFORMATION.

The General Services Administration issuing office, at the address given in this Invitation for Bids will, upon request, provide additional copies of this Invitation for Bids, and answer requests for additional available information concerning the property offered to facilitate preparation of bids. Each bid submitted shall be deemed to have been made with full knowledge of all terms, conditions, and requirements contained in this Invitation for Bids and any amendments made thereto prior to award of sale.

18. WAIVER OF INFORMALITIES OR IRREGULARITIES.

The Government may, at its election, waive any minor informality or irregularity in bids received.

QUITCLAIM DEED

STATE OF _____ }

KNOW ALL BY THESE PRESENTS:

COUNTY OF _____ }

THAT the UNITED STATES OF AMERICA acting by and through the Administrator of General Services (hereinafter sometimes called "GRANTOR"), under and pursuant to authority of the Federal Property Act, (40 USCS 541, et seq.) as amended, and rules, orders, and regulations issued pursuant thereto, for and in consideration of the sum of (SALES PRICE) Dollars (\$) duly paid by (GRANTEE'S NAME), (GRANTEE'S ADDRESS) the receipt of which is hereby acknowledged, hereby QUITCLAIMS unto the said (GRANTEE'S NAME) (hereinafter sometimes called "GRANTEE"), his heirs and assigns, subject to the reservations, exceptions, covenants, and conditions hereinafter set forth, all of its right, title, and interest in the following described property situated in the County (COUNTY) , State of (STATE) , to wit:

(Property description, as contained in SCHEDULE, to be inserted.)

TO HAVE AND TO HOLD the foregoing property together with all and singular the rights, privileges, and appurtenances thereunto in anywise belonging unto said Grantee, his heirs and assigns forever, subject to the reservations, exceptions, covenants and conditions hereinafter contained.

This quitclaim deed and conveyance is expressly made subject to the following reservations in favor of the United States of America, and its assigns: (Provisions and clauses of reservation, as set forth in the SCHEDULE, to be inserted.)

This quitclaim deed and conveyance is expressly made subject to the following matters to the extent and only to the extent the same are valid and subsisting and affect the property: (Provisions as to exceptions and other provisions, as set forth in the SCHEDULE, to be inserted.)

Grantee covenants for himself, his heirs, assigns and every successor in interest to the property herein described or any part thereof that it shall abide by each of the following covenants, each of which will be covenants running with the land. In addition, the UNITED STATES OF AMERICA shall be deemed a beneficiary of each of the following covenants without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have right to enforce each of the following covenants in any court of competent jurisdiction; provided, however, the UNITED STATES OF AMERICA shall have no affirmative duty to any successor in title to the Quitclaim Deed to enforce any of the following covenants. (Provisions and covenants as set forth in the SCHEDULE, to be inserted).

(Provisions and clauses of reservation, as set forth in SCHEDULE, to be inserted.)

(Provisions as to exceptions, as set forth in the SCHEDULE, to be inserted)

(Provisions of covenants as set forth in SCHEDULE, to be inserted)

(Other provisions, as set forth in the SCHEDULE, to be inserted)

The interest quitclaimed hereby has been reported to the Administrator of General Services and has been determined to be surplus for disposal pursuant to the Federal Property Act 40 USCS 541 et, seq, and applicable rules, orders and regulations.

IN WITNESS WHEREOF the United States of America has caused these presents to be executed this _____ day of _____, 2005.

UNITED STATES OF AMERICA
Acting by and through the
Administrator of General Services

WITNESSES:

By: SCOTT ARMEY
Regional Administrator
Greater Southwest Region
General Services Administration

(Appropriate Acknowledgment to be added)

BID FORM (Page 1 of 2)

FOR PURCHASE OF GOVERNMENT REAL PROPERTY
(TO BE EXECUTED AND SUBMITTED IN DUPLICATE-Photocopies are acceptable)

Albuquerque Federal Building
517 Gold Ave. SW
Albuquerque, NM 87102

Initial Bid☐**Increase Bid**☐**Sale # GSA-R-1543**

The undersigned bidder(s) hereby offers and agrees, if this bid is accepted within ninety (90) calendar days after the date of sale completion, to purchase the property described in the Schedule portion of this Invitation for the bid price entered below. This offer is subject to the provisions of the Invitation for Bids including the Schedule, the Special Terms of Sale, Instructions to Bidders; General Terms of Sale; the Bid Form and Acceptance all of which are incorporated herein as part of this bid.

Bid Amount: \$ _____

Enclosed pursuant to paragraph 12 of Instructions to Bidders is a Bid Deposit in amount of:

Bid Deposit: \$ 1,000.00

In the event this bid is accepted, the instrument of conveyance should name the following as Grantee(s):

Include the manner of holding title (Husband and Wife, Joint Tenants, etc.) If applicable.

Name and address of bidder (type or print)

Name: _____

Street: _____

City: _____ State: _____ Zip Code: _____

Telephone Number (_____) _____

Signature and Date

Bidder Represents that they operate as:
(check the appropriate box)

☐ an individual

☐ an individual doing business as:

☐ a partnership consisting of:

☐ a trustee acting for:

☐ a corporation, incorporated in the state of:

(If bidding as a corporation, the Certificate of Corporate Bidder, on back, must be executed and submitted in accordance with the Instructions to Bidders, Paragraph 11a., of this Invitation for Bids.)

Signer's name and title (type or print)

BID FORM (Page 2 of 2)**CERTIFICATE OF CORPORATE BIDDER**

To be completed by corporate official other than the person signing bid above

I, _____, certify that I am _____
(Secretary or other official title)

of the Corporation named as bidder herein; that _____

who signed this bid on behalf of the bidder, was then _____
(Bidder's official title i.e. President)

of the said Corporation; that said bid was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(SEAL)

Signature of Certifying Corporate Officer

DATE

ACCEPTANCE BY THE GOVERNMENT

The foregoing bid for purchase of Government owned property known as the Albuquerque Federal Building, 517 Gold Ave. SW, Albuquerque, New Mexico 87102, GSA Control Number 7-G-NM-0588, is hereby accepted by and on behalf of the United States of America acting by and through the:

Administrator of the U. S. General Services Administration

on this _____ day of _____ 200__.

Signature of Contracting Officer: _____

Name and Title of Contracting Officer: _____

Bid Deposit by Credit Card

To: General Services Administration
Real Property Disposal Division (7PR)
Attn: Sharon Jennings, Project Manager
819 Taylor Street, Suite 8A10
Fort Worth, TX 76102

Fax Number: 817-978-0212

This form may be submitted by Fax. Deposit Amount: \$ 1,000.00

By completing this form and signing the space provided below, applicant agrees to abide by the terms and conditions set forth in the Invitation for Bids No. GSA-R-1543. The applicant must be the authorized cardholder. The applicant agrees that his or her credit card account will be debited the full amount of the bid deposit, as specified in the Instructions to Bidders for Online Auction, paragraph 12, Bid Deposit Terms. In the event that applicant becomes the successful bidder, the bid deposit will be applied towards the purchase price for the property. In the event the applicant is not the successful bidder, the bid deposit will be credited to the credit account listed below.

Applicant's Last Name (please print): _____

First Name: _____ M.I.: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Visa _____ Master Card _____ Discover _____ AmEx _____

Card Number: _____ Expiration Date _____

Driver's License #: State _____ /DL# _____

Name as it appears on card: _____

E-Mail Address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

Signature: _____ Date: _____

Bid Deposit by Credit Card

To: General Services Administration
Real Property Disposal Division (7PR)
Attn: Sharon Jennings, Project Manager
819 Taylor Street, Suite 8A10
Fort Worth, TX 76102

Fax Number: 817-978-0212

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Applicant's Last Name (please print): _____

First Name: _____ M.I.: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Visa _____ Master Card _____ Discover _____ AmEx _____

Card Number: _____ Expiration Date _____

Driver's License #: State _____ /DL# _____

Name as it appears on card: _____

E-Mail Address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

Signature: _____ Date: _____

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

**U.S. GOVERNMENT
LEASE FOR REAL PROPERTY**

DATE OF LEASE

LEASE NO.

GS-07B-16182

THIS LEASE, made and entered into this date by and between "To Be Determined"

whose address is "To Be Determined"

and whose interest in the property hereinafter described is that of Owner, hereinafter called the Lessor, and the UNITED STATES OF AMERICA, acting by and through the Administrator of the General Services Administration, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:
 - a. 35,869 square feet of the Penthouse Utility Area and the Basement Utility Area, inclusive of the Central Energy Heating Plant, the Central Energy Chiller Plant, two Central Plant Domestic Hot Water Systems, the cooling towers and the telecommunications hub located in a building known as the Albuquerque Federal Building and bearing the municipal address of: 517 Gold Avenue S.W., Albuquerque, New Mexico 87102. The building is legally described in Exhibit A (Legal Description). The leased premises are identified on Exhibits B (Survey) and C (Drawing of the Basement and Penthouse Utility Areas);
 - b. Possessory interest in all equipment located in the Penthouse Utility Area and the Basement Utility Area, including the right to maintain, repair and/or replace said equipment. Peripheral rights to maintain, repair and/or replace any other equipment located outside of the Penthouse Utility Area and the Basement Utility Area that would be necessary to service the equipment located in the Penthouse Utility Area and the Basement Utility Area; and
 - c. A non-exclusive leasehold estate in the common area facilities of the building including, but not limited to, the following:
 - (1) lobbies, halls, corridors, stairs, stairways, fire escapes/entrances/exits of the building;
 - (2) elevators, tanks, pumps, motors, fans, compressors, ducts and all apparatus and installations existing for common use; and
 - (3) all other parts of property necessarily in common use or convenient to its maintenance.
 - (4) The government shall have access to the building, 24 hours a day, 7 days a week.

The leased premises are to be used for such purposes as determined by the General Services Administration.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on _____, 2006 through _____, 2011, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of \$120.00 per annum at the rate of \$10.00 per month. Rent for a lesser period shall be prorated. Rent checks shall be made payable electronically through the ACH Vendor/Miscellaneous Payment enrollment to: "To Be Determined"

4. The Government may terminate this lease in whole or in part at any time by giving at least 60 days'

notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. This lease may be renewed, at the option of the Government, for one (1) five (5) year term at the annual rent of \$120.00 per annum at the rate of \$10.00 per month, provided notice be given in writing to the Lessor at least 60 days before the end of the original lease term; all other terms and conditions of this lease shall remain the same during the renewal term. Said notice shall be computed commencing with the day after the date of mailing.

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

This transaction is part of a sale of the subject property by the Government and, at the same time, the sale is subject to a lease of the premises back to the Government. The sale is predicated and conditioned upon the acceptance of the lease terms as set forth by the Government.

7. The following are attached and made a part hereof:

Exhibit A – Legal Description (1 page)
Exhibit B – Survey of 517 Gold Avenue (1 page)
Exhibit C – Drawing of Basement And Penthouse Facilities (4 pages)
Exhibit D – Utility Usage Terms (1 page)
GSA Forms – Solicitation Provisions, GSA Form 3516 (Rev. 12/03), (1 page)
General Clauses, GSA Form 3517B (Rev. 11/05), (33 pages)
Representations and Certifications, GSA Form 3518 (Rev. 7/04), (7 pages)

8. The following changes were made in this lease prior to its execution: None

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR

BY _____
(Signature) (Signature)

IN PRESENCE OF:

(Signature) (Address)

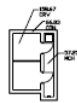
UNITED STATES OF AMERICA

GASPARE LADUCA
CONTRACTING OFFICER
GENERAL SERVICES ADMINISTRATION
819 TAYLOR STREET
FORT WORTH, TX 76102
(Official title)

BY _____
(Signature)

Exhibit A to Lease No. GS-07B-16182**“Legal Description”**

LOTS NUMBERED (13), FOURTEEN (14), FIFTEEN (15), SIXTEEN (16), SEVENTEEN (17), EIGHTEEN (18), NINETEEN (19), TWENTY (20), TWENTY-ONE (21), TWENTY-TWO (22), TWENTY-THREE (23), AND TWENTY-FOUR (24) OF BLOCK NUMBERED NINETEEN (19) OF THE NEW MEXICO TOWN COMPANY’S ADDITION TO THE CITY OF ALBUQUERQUE, NEW MEXICO, KNOWN AS THE ORIGINAL TOWNSITE, AS THE SAME ARE SHOWN AND DESIGNATED ON THE MAP OF SAID TOWNSITE, FILED IN THE OFFICE OF THE PROBATE CLERK AND EX-OFFICIO RECORDER OF BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 29, 1882.



NM0024 SB
282.75 SQ. FT.

SUB-BASEMENT
 SCALE 1/4" = 1'-0"

PROPERTY OF THE UNITED STATES GOVERNMENT - FOR OFFICIAL USE ONLY. Do not transmit this notice. Property having this marking shall be disposed of as follows: 1. If the property is not to be used for official purposes, it shall be destroyed. 2. If the property is to be used for official purposes, it shall be marked with the appropriate marking.

[illegible]

Exhibit "D" to Lease No. GS-07B-16182**Utility Usage Terms**

The Government shall provide steam and chilled water to the subject building in consideration for the payment by the Lessor to the Government of monthly energy use charges and based on the Logistics Management Institute (LMI) rate of \$1.83 per rentable square foot. The current annual amount is \$351,680.25 (LMI rate of \$1.83 per rentable square foot times 192,175 rentable square feet). The LMI rate will be adjusted annually on the anniversary date of this lease to the new LMI rate in effect at that time.

The normal hours of operations are from 6:00 a.m. to 6:00 p.m., except Saturday, Sunday and Federal holidays. The hourly rate for overtime utility usage shall be \$117.23. If heating or cooling is required on an overtime basis, such services will be ordered orally or in writing by the Lessor from the General Services Administration Building Manager. Arrangement for payments by the Lessor will be established at the time the lease is executed by the Government. In the event the Government can no longer furnish such heating and cooling, it shall have no further obligation to do so and the Lessor shall have no further obligation to pay the Government for such heating and cooling.

SOLICITATION PROVISIONS
(Acquisition of Leasehold Interests in Real Property)

1. 52.252-1 - SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (VARIATION) (DEC 2003)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available or the full text of a solicitation provision may be accessed electronically as GSA Form 3516A at this address: <http://www.gsa.gov/leasingform>.

2. The following provisions are incorporated by reference:

GSAR 552.270-1	INSTRUCTIONS TO OFFERORS -- ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (MAR 1998)
FAR 52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999) (Applicable to leases exceeding \$10 million)
GSAR 552.270-3	PARTIES TO EXECUTE LEASE (SEP 1999)
FAR 52.233-2	SERVICE OF PROTEST (AUG 1996)
GSAR 552.233-70	PROTESTS FILED DIRECTLY WITH THE GENERAL SERVICES ADMINISTRATION (MAR 2000)
FAR 52.215-5	FACSIMILE PROPOSALS (OCT 1997) (Applicable only if facsimile proposals are authorized.)

3. FLOOD PLAINS AND WETLANDS (APR 1984)

An award of contract will not be made for a property located within a base flood plain or wetland unless the Government has determined it to be the only practicable alternative.

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

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The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

GENERAL CLAUSES
(Acquisition of Leasehold Interests in Real Property)

1. 552.270-4 DEFINITIONS (SEP 1999) (VARIATION)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

- (a) "Commencement Date" means the first day of the term.
- (b) "Contract" and "Contractor" means "Lease" and "Lessor," respectively.
- (c) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (d) "Delivery Date" means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.
- (e) "Delivery Time" means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.
- (f) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:
 - (1) acts of God or of the public enemy,
 - (2) acts of the United States of America in either its sovereign or contractual capacity,
 - (3) acts of another contractor in the performance of a contract with the Government,
 - (4) fires,
 - (5) floods,
 - (6) epidemics,
 - (7) quarantine restrictions,
 - (8) strikes,
 - (9) freight embargoes,
 - (10) unusually severe weather, or

(11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

- (g) "Lessor" means the sub-lessor if this lease is a sublease.
- (h) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.
- (i) "Notice" means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.
- (j) "Premises" means the space described on the Standard Form 2, U.S. Government Lease for Real Property, of this lease.
- (l) "Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.
- (m) "Usable square feet" means the ANSI/BOMA Z65.1-1996 definition for BOMA usable office area, which means "The area where a tenant normally houses personnel and/or furniture, for which a measurement is to be computed."
- (n) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

2. 552.270-5 SUBLETTING AND ASSIGNMENT (SEP 1999)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

3. 552.270-11 SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

4. 552.270-23 SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP 1999)

- (a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve

the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

- (b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.
- (c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.
- (d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

5. 552.270-24 STATEMENT OF LEASE (SEP 1999)

- (a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.
- (b) Letters issued pursuant to this clause are subject to the following conditions:
 - (1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;
 - (2) That the Government shall not be held liable because of any defect in or condition of the premises or building;
 - (3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and
 - (4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

6. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

7. 552.270-26 NO WAIVER (SEP1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

8. 552.270-27 INTEGRATED AGREEMENT (SEP 1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

9. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

10. 552.270-17 DELIVERY AND CONDITION (SEP 1999)

- (a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.
- (b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

11. 552.270-18 DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP 1999) (VARIATION)

- (a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

- (2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.
- (3) Other, additional relief provided for in this lease, at law, or in equity.
- (b) Damages to which the Government is entitled to under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Contracting Officer specifying such damages.
- (c) Delivery by Lessor of less than the minimum ANSI/BOMA Office Area square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.
- (d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

12. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

13. 552.270-21 EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP 1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

14. 552.270-6 MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (SEP 1999) (VARIATION)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and condition

so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

15. 552.270-10 FAILURE IN PERFORMANCE (SEP 1999)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

16. 552.270-22 DEFAULT BY LESSOR DURING THE TERM (SEP 1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

17. 552.270-7 FIRE AND CASUALTY DAMAGE (SEP 1999)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor

from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

18. 552.270-8 COMPLIANCE WITH APPLICABLE LAW (SEP 1999)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

19. 552.270-12 ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

20. 552.270-29 ACCEPTANCE OF SPACE (SEP 1999) (VARIATION)

- (a) When the Lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the Lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.
- (b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required ANSI/BOMA Office Area square footage as indicated in the paragraph of this solicitation entitled "Amount and Type of Space."

21. 552.270-9 INSPECTION—RIGHT OF ENTRY (SEP 1999)

- (a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

- (1) inspecting, sampling and analyzing of suspected asbestos-containing materials and air monitoring for asbestos fibers;

- (2) inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;

(3) inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

- (b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

22. 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003) (VARIATION)

- (a) Definitions. As used in this clause—

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern.

"Offeror" means the owner of the property offered, not an individual or agent representing the owner.

"Registered in the CCR database" means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active."

(b) (1) By submission of an offer, the Offeror acknowledges the requirement that a prospective awardee must be registered with D&B and in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation.

(2) The Offeror shall enter in the appropriate block, on the GSA Form 3518, entitled Representations and Certifications, the legal entity's name and address, followed by the DUNS or DUNS +4 number that identifies the Offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the Offeror is registered in the CCR database.

- (c) If the Offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An Offeror may obtain a DUNS number—

- (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
- (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The Offeror should be prepared to provide the following information:

- (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State, and ZIP Code.
 - (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, the Contractor shall comply with the requirements of Subpart 42.12 of the Federal Acquisition Regulations (FAR) and provide the responsible Contracting Officer a fully revised and initialed/signed GSA Form 3518, entitled Representations and Certifications, along with written notification of its intention to (A) change the name in the CCR database; and (B) provide the Contracting Officer with sufficient documentation to verify and confirm the legally changed name or change in ownership.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information.

- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

23. 552.232-75 PROMPT PAYMENT (SEP 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

- (a) *Payment due date.*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service.

However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

- (b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent

(must be the same as that in the remittance address in the lease or the order).

- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

24. 552.232-76 ELECTRONIC FUNDS TRANSFER PAYMENT (MAR 2000) (VARIATION)

- (a) The Government will make payments under this lease by electronic funds transfer (EFT). The Lessor must, no later than 30 days before the first payment:

- (1) Designate a financial institution for receipt of EFT payments.
- (2) Submit this designation to the Contracting Officer or other Government official, as directed.

- (b) The Lessor must provide the following information:
- (1) The American Bankers Association 9-digit identifying number for Automated Clearing House (ACH) transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.
 - (2) Number of account to which funds are to be deposited.
 - (3) Type of depositor account ("C" for checking, "S" for savings).
 - (4) If the Lessor is a new enrollee to the EFT system, the Lessor must complete and submit Form SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, before payment can be processed.
- (c) If the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment, the appropriate Government official must receive notice of such change and the required information specified above no later than 30 days before the date such change is to become effective.
- (d) The documents furnishing the information required in this clause must be dated and contain the:
- (1) Signature, title, and telephone number of the Lessor or the Lessor's authorized representative.
 - (2) Lessor's name.
 - (3) Lease number.
- (e) Lessor's failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

25. 552.232-70 INVOICE REQUIREMENTS (SEP 1999) (VARIATION)

(This clause is applicable to payments other than rent.)

- (a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or order.
- (b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the order.

ACT Number (to be supplied on individual orders)

- (c) If information or documentation in addition to that required by the Prompt Payment clause of this contract is required in connection with an invoice for a particular order, the order will indicate what information or documentation must be submitted.

26. 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(Applicable to leases over \$2,500.)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

27. 552.270-20 PAYMENT (SEP 1999) (VARIATION)

- (a) When space is offered and accepted, the ANSI/BOMA Office Area square footage delivered will be confirmed by:

(1) the Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) a mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

- (b) Payment will not be made for space which is in excess of the amount of ANSI/BOMA Office Area square footage stated in the lease.
- (c) If it is determined that the amount of ANSI/BOMA Office Area square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of Usable space delivered and the annual rental will be adjusted as follows:

Usable square feet not delivered multiplied by the ANSI/BOMA Office Area square foot (USF) rate equals the reduction in annual rent. The rate per USF is determined by dividing the total annual rental by the Usable square footage set forth in the lease.

$\text{USF Not Delivered} \times \text{Rate per USF} = \text{Reduction in Annual Rent.}$

28. 552.203-5 COVENANT AGAINST CONTINGENT FEES (FEB 1990)

(Applicable to leases over \$100,000.)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

29. 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback;
or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

30. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) *Definitions.* As used in this clause—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is

prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

31. 552.203-70 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)

(Applicable to leases over \$100,000.)

- (a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

- (b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

32. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(Applicable when cost or pricing data are required for work or services over \$500,000.)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

33. 552.270-13 PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed;

(3) Equipment costs;

(4) Worker's compensation and public liability insurance;

(5) Overhead;

(6) Profit; and

(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4) and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

34. 552.270-14 CHANGES (SEP 1999) (VARIATION)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services;

- (3) Facilities or space layout; or
 - (4) Amount of space, provided the Lessor consents to the change.
- (b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:
- (1) A modification of the delivery date;
 - (2) An equitable adjustment in the rental rate;
 - (3) A lump sum equitable adjustment; or
 - (4) An equitable adjustment of the annual operating costs per ANSI/BOMA Office Area square foot specified in this lease.
- (c) The Lessor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Lessor from proceeding with the change as directed.
- (d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

35. 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

36. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (JUN 1999)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to

reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

- (d) *Comptroller General.*

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

- (f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

37. 52.233-1 DISPUTES (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

38. 52.222-26 EQUAL OPPORTUNITY (APR 2002)

(Applicable to leases over \$10,000.)

- (a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100, (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of paragraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

39. 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)

(Applicable to leases over \$10,000,000.)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of

\$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

40. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(Applicable to leases over \$10,000.)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

41. 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(Applicable to leases over \$25,000.)

- (a) *Definitions.* As used in this clause—

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management" means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or
(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.*

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.*

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State

wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the

Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

42. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(Applicable to leases over \$10,000.)

(a) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.*

(1) The Contractor agrees to post employment notices stating—

- (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and
- (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

43. 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(Applicable to leases over \$25,000.)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

44. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)

(Applicable to leases over \$25,000.)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

45. 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(Applicable when the clause at FAR 52.215-10 is applicable.)

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data— Modifications.

46. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

47. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2005)

(Applicable to leases over \$500,000.)

- (a) This clause does not apply to small business concerns.

- (b) *Definitions.* As used in this clause—

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the Offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the Offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

- (d) The Offeror's subcontracting plan shall include the following:

- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;

- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data

submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor.

Contractors having commercial plans need not comply with this requirement.

- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided—

(1) The master plan has been approved;

(2) The Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the Offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the Offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns"; or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report.* This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

48. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(Applicable to leases over \$500,000.)

- (a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

REPRESENTATIONS AND CERTIFICATIONS (Acquisition of Leasehold Interests in Real Property)	Solicitation Number	Dated
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Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following Representations and Certifications. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

49. 52.219-1 - SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 531190.

(2) The small business size standard is \$17.5 Million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

(1) The Offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *[Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The Offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The Offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(4) *[Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The Offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(5) *[Complete only if the Offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.]* The Offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(6) *[Complete only if the Offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The Offeror represents, as part of its offer, that—

(i) It [] is, [] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [] is, [] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The Offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.*] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) *Definitions.* As used in this provision—

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

50. 52.204-5 - WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

- (a) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
- (b) *Representation.* [Complete only if the Offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The Offeror represents that it [] is a women-owned business concern.

51. 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

(Applicable to leases over \$10,000.)

The Offeror represents that—

- (a) It [] has, [] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It [] has, [] has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards. (Approved by OMB under Control Number 1215-0072.)

52. 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

(Applicable to leases over \$10,000 and which include the clause at FAR 52.222-26, Equal Opportunity.)

The Offeror represents that—

- (a) It [] has developed and has on file, [] has not developed and does not have on file, at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or
- (b) It [] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (Approved by OMB under Control Number 1215-0072.)

53. 52.203-02 - CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

- (a) The Offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above _____ [Insert full name of person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the Offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in action contrary to subparagraphs (a)(1) through (a)(3) above.

- (c) If the Offeror deletes or modifies subparagraph (a)(2) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

54. 52.203-11 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(Applicable to leases over \$100,000.)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, —

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

55. 52.209-5 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

(Applicable to leases over \$100,000 average net annual rental, including option periods.)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local)

contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

- (C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

56. 52.204-3 - TAXPAYER IDENTIFICATION (OCT 1998)

- (a) *Definitions.*

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All Offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the Offeror to furnish the information may result in a 31 percent reduction of payments otherwise due

under the contract.

- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the Offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the Offeror's TIN.

- (d) *Taxpayer Identification Number (TIN).*

- [] TIN: _____
 [] TIN has been applied for.
 [] TIN is not required because:
 [] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 [] Offeror is an agency or instrumentality of a foreign government;
 [] Offeror is an agency or instrumentality of the Federal government;

- (e) *Type of organization.*

- [] Sole proprietorship; [] Government entity (Federal, State, or local);
 [] Partnership; [] Foreign government;
 1.6049-4; [] Corporate entity (not tax-exempt); [] International organization per 26 CFR
 [] Corporate entity (tax-exempt); [] Other _____

- (f) *Common Parent.*

- [] Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
 [] Name and TIN of common parent:

Name _____

TIN _____

57. 52.204-6 – Data Universal Numbering System (DUNS) Number (OCT 2003)

- (a) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the Offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the Offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.
- (b) If the Offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An Offeror may obtain a DUNS number—

- (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The Offeror should be prepared to provide the following information:

U.S. General Services Administration
Public Buildings Service
Real Property Disposal Division (7PR)
819 Taylor Street, Room 8A10
Fort Worth, TX 76102-6103

*Official Use Only
Penalty for Private Use \$300*

